

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Southern Minnesota Municipal Power Agency

Docket No. EL02-68-000

ORDER ESTABLISHING SETTLEMENT JUDGE PROCEDURES

(Issued June 14, 2002)

In this order, we establish settlement judge procedures for a complaint filed by Southern Minnesota Municipal Power Agency (Southern Minnesota) against Alliant Energy Corporate Services, Inc. (Alliant). This order benefits customers because the assistance of a settlement judge may be helpful in discerning the rights and obligations of the parties and, thereby, may prove useful in ultimately reducing the time and expense involved in resolving this dispute.

Background

On November 1, 2000, as amended on December 14, 2000, Alliant filed in Docket Nos. ER01-312-000 and ER01-312-001 revisions to its Open Access Transmission Tariff (OATT) and rates for open access transmission and ancillary services of the Alliant Operating Companies. On December 29, 2000, the Commission issued an order in that proceeding, accepting those proposed revisions for filing and establishing hearing procedures.¹

On June 11, 2001, Alliant filed a settlement agreement (Settlement Agreement) between Alliant and various parties (including Southern Minnesota), stating, in relevant part, the following:

¹See Alliant Energy Corporate Services, Inc., 93 FERC ¶ 61,340 (2000).

Because it is the wish that resolution of the issues in this docket not be delayed by the unresolved [Termination of Shared Transmission Agreement (TSTA)]² claims, which involve only [Southern Minnesota and Alliant], [they] will seek Commission approval to resolve those disputes under the direction of a Commission-designated settlement judge, and will make good faith efforts to reach satisfactory resolution of those claims under the auspices of the FERC settlement process.³

On September 12, 2001, in Alliant Energy Corporate Services, Inc., 96 FERC ¶ 61,259 at 62,013 (September 12 Order), reh'g denied, 97 FERC ¶ 61,365 (2001) (December 26 Order), appeal filed sub. nom., D.C. Cir. No. 02-1081 (2002), the Commission approved the uncontested Settlement Agreement (and the rates submitted with that settlement) and terminated Docket Nos. ER01-312-000 and ER01-312-001. In addition, the Commission, in the September 12 Order, noted that "[t]he Commission understands that Alliant and [Southern Minnesota] intend to make good faith efforts to resolve satisfactorily certain outstanding disputes arising from a [TSTA]."⁴

In its request for rehearing of the September 12 Order, Southern Minnesota argued that, while the Commission recognized in that order that there remained outstanding issues concerning the TSTA between Southern Minnesota and Alliant, it neglected to establish a procedure for settlement of those issues. Therefore, Southern Minnesota requested that the Commission appoint a settlement judge to oversee and facilitate resolution of those issues. In the December 26 Order, the Commission stated that:

A request for a settlement judge to aid the parties in their efforts at settlement [of the TSTA claims] should be the subject of a separate filing in a separate proceeding, and not this proceeding. In the unique circumstances of the parties' agreement to request a settlement judge, we will allow the parties to file such a request as a new 'EL' docket under Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.603 (2001).⁵

²The TSTA governs the terms under which Southern Minnesota receives network service, transmission facilities credits, and related services from Alliant.

³Offer of Settlement Agreement, Alliant Energy Corporate Services, Inc., Docket Nos. ER01-312-000 and ER01-312-001.

⁴96 FERC at 62,013.

⁵97 FERC ¶ 61,365 at 61,704 n.7.

Consistent with that directive, on March 11, 2002, Southern Minnesota filed a complaint, requesting that the Commission appoint a settlement judge to address the unresolved claims pertaining to the TSTA. In addition, in the complaint, Southern Minnesota states what it believes to be the issues that remain unresolved. In particular, Southern Minnesota contends, among other things, that the splitting, for rate purposes, of Alliant's original system into eastern and western components and Alliant's resulting increase of Southern Minnesota's rates constitutes an "interstate default," as defined in the TSTA. Accordingly, Southern Minnesota maintains that, because of this interstate default, Alliant is no longer entitled to the \$28,455.93 monthly termination payment from Southern Minnesota and, in addition, Southern Minnesota may be entitled to compensation for monetary damages resulting from the breach of the TSTA by Alliant.

Alliant filed an answer to the complaint, stating that the basis for Southern Minnesota's claims regarding the TSTA (*i.e.*, the rate impact and the diminution in scope of service relating to the "split" of the Alliant's transmission system) has been previously considered by the Commission and rejected by it in the December 29 Order. Accordingly, Alliant states that Southern Minnesota is barred under the doctrines of collateral estoppel and res judicata from bringing those claims in this proceeding. Nevertheless, Alliant notes that, as it agreed in the Settlement Agreement, it is also willing to take the issue of the TSTA to a Commission-designated settlement judge.

Southern Minnesota filed an answer to Alliant's answer, stating that it was providing additional information regarding the circumstances leading up to the complaint and clarification of several points raised in Alliant's answer.

Notice and Pleadings

Notice of Southern Minnesota's complaint was published in the Federal Register, 67 Fed. Reg. 12,009 (2002), with interventions, comments, and protests due on or before April 1, 2002. None was filed.

Discussion

We agree with the parties in this matter that the issues regarding the TSTA are best addressed in settlement judge procedures. Accordingly, in order to assist the parties in resolving this matter amicably among themselves, we direct settlement judge procedures,

pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶ Because the parties have agreed in the Settlement Agreement to have the Commission designate a settlement judge for this proceeding, the Chief Administrative Law Judge (Chief Judge) will select a judge for this purpose. The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions. Accordingly, the Commission will not address the merits of the complaint at this time but instead will consider such matters, if necessary, at a later date

The Commission orders:

(A) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2001), the Chief Judge is hereby directed to appoint a settlement judge within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge.

(B) Within 60 days of the date of this order, the settlement judge shall file a report to the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

⁶See 18 C.F.R § 385.603 (2001).